

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL-17-md-2775
Hon. Catherine C. Blake

This Document Relates to
Case No. 1:18-cv-00981

SHORT FORM COMPLAINT

SHORT FORM COMPLAINT

1. Plaintiff, Robyn Sowers, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint pursuant to CMO No. 3, entered by this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a resident and citizen of Thurston County, Washington and claims damages as set forth below.

3. Plaintiff's Spouse _____ is a resident and citizen of _____
~~and claims loss of consortium damages as set forth below.~~

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place:
United States District Court for the Western District of Washington.

6. The Federal District in which Plaintiff's revision(s) surgeries took place:
United States District Court for the Western District of Washington.

7. Plaintiff brings this action [*check the applicable designation*]:

_____ In a representative capacity as the _____ of the _____
having been duly appointed as the _____ by the _____ Court of _____
_____. A copy of the Letters of Administration for a wrongful death claim is annexed
hereto if such letters are required for the commencement of such a claim by the Probate,
Surrogate or other appropriate court of the jurisdiction of the decedent. *[Cross out if not
applicable.]*

FACTUAL ALLEGATIONS

8. On or about August 18, 2008, Plaintiff underwent surgery during which the
Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT/RIGHT) hip.

9. Plaintiff's (LEFT/RIGHT) BHR implant surgery was performed at
Swedish Medical Center by Dr. James Pritchett.

10. Plaintiff underwent medically-indicated revision of the (LEFT/RIGHT) BHR hip
implant on or about April 24, 2012, replacing the failed Birmingham Resurfacing liner with an
R3 metal liner and on April 6, 2015 due to failure of the R3 metal liner. ~~[OR: Plaintiff's medical
provider(s) have recommended revision but Plaintiff has not been medically cleared to undergo
revision surgery: (checkbox)]~~

11. Plaintiff's revision surgeries were performed by Dr. James Pritchett at
Swedish Medical Center.

12. Plaintiff suffered the following complications, injuries, and/or indications, some
or all of which made revision surgery medically necessary:
Adverse reaction to metal debris; pain; effusion; elevated cobalt and chromium blood levels;
"Synovial hypertrophy with staining in the tissues"

13. ~~[IF BILATERAL]: Plaintiff's (LEFT/RIGHT) BHR implant surgery was performed at _____ by _____.~~

14. ~~[IF BILATERAL]: On or about _____, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT/RIGHT) hip.~~

15. ~~[IF BILATERAL]: Plaintiff underwent medically indicated revision of the (LEFT/RIGHT) BHR hip implant on or about _____. [OR: Plaintiff's medical provider(s) have recommended revision but Plaintiff has not been medically cleared to undergo revision surgery: _____(checkbox)]~~

16. ~~[IF BILATERAL] Plaintiff's revision surgery was performed by _____ at _____.~~

17. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 11, 2017, and any and all amendments to the MACC.

18. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC: _____.

19. Notwithstanding the foregoing, Plaintiff additionally alleges that:

ALLEGATIONS AS TO INJURIES

20. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO ~~HERSELF~~/HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 SURVIVORSHIP ACTION
 ECONOMIC LOSS

(b) ~~Plaintiff's spouse claims damages as a result of (check all that are applicable):~~

~~*[Cross out if not applicable.]*~~

 ~~LOSS OF SERVICES~~
 ~~LOSS OF CONSORTIUM~~

21. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

22. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference under the laws of the following state (check all that are applicable):

 X COUNT I (strict products liability: Washington)
 X COUNT II (negligence: Washington)
 X COUNT III (strict products liability failure to warn: Washington)
 X COUNT IV (negligent failure to warn: Washington)
 X COUNT V (negligent misrepresentation: Washington)

X COUNT VI (negligence per se: Washington)

X COUNT VII (breach of express warranties: Washington)

X COUNT VIII (manufacturing defect: Washington)

X COUNT IX (punitive damages: Washington)

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

Fraudulent concealment and RCW §19.86.010 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: April 18, 2018

Respectfully submitted,

McGARTLAND LAW FIRM, PLLC

s/ Michael P. McGartland
Michael P. McGartland
Texas Bar 13610800
University Centre I, Suite 500
1300 South University Drive
Fort Worth, Texas 76107
Telephone: (817) 332-9300
Facsimile: (817) 332-9301
mike@mcgartland.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of April, 2018, that I electronically filed the foregoing with the Clerk of the Court by using CM/ECF. Notice of the filing will be sent by e-mail to all parties by operations of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access the filing through the court's CM/ECF system.

s/ Michael P. McGartland
Attorney for Plaintiff